

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KRISTOPHER BENJAMIN, )  
Petitioner, )  
                )  
                )  
v.               ) Civil Action No. 06-572  
                   ) District Judge Thomas M. Hardiman  
ATTORNEY GENERAL OF PA. ) Magistrate Judge Amy Reynolds Hay  
Respondent.      )

MEMORANDUM ORDER

This case was referred to Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules of Court.

The magistrate judge's report and recommendation ("R&R") dated September 19, 2006 (doc. no. 26), recommended that the Petition for Habeas Corpus be dismissed without prejudice for failure to exhaust as counsel has been appointed for Petitioner to pursue post conviction proceedings in the Pennsylvania state courts. The parties were allowed ten days from the date of the R&R to file objections. Objections were filed by Petitioner (doc. no. 27). After *de novo* review of the pleadings and documents in the case, together with the R&R and objections, the following order is entered:

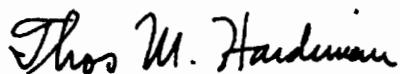
**IT IS HEREBY ORDERED** that the R&R of the magistrate judge dated September 19, 2006 (doc. no. 26) is **ACCEPTED and ADOPTED** as the opinion of the Court with the following additional

findings:

Petitioner correctly notes in his Objections some inaccuracies in the R&R with regards to his procedural history, e.g., the fact that his three one-year probation sentences were imposed to run concurrently (p. 13 of objections) and the fact that his letter of inquiry (Commw. Ex. 7) referenced his state petition for writ of habeas corpus rather than his motion for modification/reduction of sentence (p. 15 of objections). Correction of these minor inaccuracies, however, does not change the outcome of the conclusion in the R&R that his petition should be dismissed without prejudice for failure to exhaust because his claims can be properly presented to all levels of the Pennsylvania state courts through his presently pending PCRA proceeding, where he is represented by counsel.

In accordance with the foregoing, therefore, **IT IS ORDERED** that the Petition for Writ of habeas Corpus is **DISMISSED WITHOUT PREJUDICE.**

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.



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Thomas M. Hardiman  
United States District Judge

cc: Honorable Amy Reynolds Hay  
United States Magistrate Judge

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